



## ORACLE LICENSE AND SERVICES AGREEMENT

### A. Agreement Definitions

“You” and “your” refers to the State of Kansas, who has executed this agreement (“agreement”) and ordered programs and/or services from Oracle USA, Inc. (“Oracle”) and includes all State agencies, departments, boards and commissions. “You” does not include the following seven Board of Regents Universities: Emporia State University, Fort Hays State University, University of Kansas Medical Center, Kansas State University, Pittsburg State University, University of Kansas, and Wichita State University (collectively, these seven Boards of Regents Universities are referred to as “the Universities”). The term “ancillary programs” refers to third party materials specified in the program documentation which may only be used for the purposes of installing or operating the programs with which the ancillary programs are delivered. The term “program documentation” refers to the program user manual and program installation manuals. The term “programs” refers to the software products owned or distributed by Oracle which you have ordered, program documentation, and any program updates acquired through technical support. The term “services” refers to technical support, education, hosted/outsourcing services, consulting or other services which you have ordered.

### B. Applicability of Agreement

This agreement is valid for the purchase of licenses and technical support for such licenses in connection with your Financial Management System. Despite the expiration of this agreement, you may continue to order technical support for the programs on an annual basis in accordance with Section H (Technical Support).

### C. Rights Granted

Upon Oracle’s acceptance of your order, you have the non-exclusive, non-assignable, royalty free, perpetual (unless otherwise specified in the ordering document), limited right to use the programs and receive any services you ordered solely for your internal business operations and subject to the terms of this agreement, including the definitions and rules set forth in the order and the program documentation. Oracle shall not revoke your right to use the programs in accordance with the preceding sentence unless Oracle terminates the agreement in accordance with Section I, or ends a license in accordance with Section G(1) of this agreement. You may allow your agents, contractors (including, without limitation, outsourcers) to use the programs for this purpose and you are responsible for their compliance with this agreement in such use. For programs that are specifically designed to allow your customers, suppliers and the Universities to interact with you in the furtherance of your internal business operations, such use is allowed under this agreement. If accepted, Oracle will notify you and this notice will include a copy of your agreement. Program documentation is delivered with the programs, or you may access the documentation online at <http://oracle.com/contracts>. Services are provided based on Oracle’s policies for the applicable services ordered, which are subject to change, and the specific policies applicable to you, and how to access them, will be specified on your order (except technical support services, which are as specified in Section H of this agreement). Upon payment for services, you have the non-exclusive, non-assignable, royalty free, perpetual, limited right to use for your internal business operations anything developed by Oracle and delivered to you under this agreement; however, certain deliverables may be subject to additional license terms provided in the ordering document.

The services provided under this agreement may be related to your license to use programs which you acquire under a separate order. The agreement referenced in that order shall govern your use of such programs. Any services acquired from Oracle are bid separately from such program licenses, and you may acquire either services or such program licenses without acquiring the other.

### D. Ownership and Restrictions

Oracle or its licensors retain all ownership and intellectual property rights to the programs. Oracle retains all ownership and intellectual property rights to anything developed by Oracle and delivered to you under this agreement resulting from the services. You may make a sufficient number of copies of each program for your licensed use and one copy of each program media.

Third party technology that may be appropriate or necessary for use with some Oracle programs is specified in the program documentation. Such third party technology is licensed to you under the terms of the third party technology license agreement specified in the program documentation and not under the terms of this agreement.

You may not:

- remove or modify any program markings or any notice of Oracle's or its licensors' proprietary rights;
- make the programs or materials resulting from the services available in any manner to any third party for use in the third party's business operations (unless such access is expressly permitted for the specific program license or materials from the services you have acquired);
- cause or permit reverse engineering (unless required by law for interoperability), disassembly or decompilation of the programs (the foregoing prohibition includes but is not limited to review of data structures or similar materials produced by programs);
- disclose results of any program benchmark tests without Oracle's prior written consent except as such disclosure may be required by Open Records Act of the State of Kansas (K.S.A. 45-215 et seq.) (the "Act"). To the extent permissible under the Act, you agree to give Oracle reasonable notice prior to any such disclosure to allow Oracle to seek injunctive relief or other such relief as may be appropriate.

#### **E. Warranties, Disclaimers and Exclusive Remedies**

Oracle warrants that (1) a program licensed to you will operate in all material respects as described in the applicable program documentation for one year after delivery (i.e., via physical shipment or electronic download), and (2) as of the effective date of this agreement, Oracle has not designed a program licensed to you under this agreement to contain any feature intentionally designed by Oracle for the purpose of preventing your use of the programs. These features may include, without limitations, code sometimes referred to as a worm, software lock, drop dead device, Trojan-horse routine, trap door, time bomb or any other codes or instructions that were intentionally designed by Oracle for the purpose of deleting, damaging or disabling the ordered programs or your computer system with the passage of time or under the control or direction of a person other than you.

You must notify Oracle of any program warranty deficiency within one year after delivery. Oracle also warrants that services will be provided in a professional manner consistent with industry standards. You must notify Oracle of any services warranty deficiencies within 90 days from performance of the defective services.

**ORACLE DOES NOT GUARANTEE THAT THE PROGRAMS WILL PERFORM ERROR-FREE OR UNINTERRUPTED OR THAT ORACLE WILL CORRECT ALL PROGRAM ERRORS.**

**FOR ANY BREACH OF THE ABOVE WARRANTIES, YOUR EXCLUSIVE REMEDY AND ORACLE'S ENTIRE LIABILITY SHALL BE: (A) THE CORRECTION OF PROGRAM ERRORS THAT CAUSE BREACH OF THE WARRANTY; OR, IF ORACLE CANNOT SUBSTANTIALLY CORRECT SUCH BREACH IN A COMMERCIALY REASONABLE MANNER, YOU MAY END YOUR PROGRAM LICENSE AND RECOVER THE FEES PAID TO ORACLE FOR THE PROGRAM LICENSE AND ANY UNUSED, PREPAID TECHNICAL SUPPORT FEES YOU HAVE PAID FOR THE PROGRAM LICENSE; OR (B) THE REPERFORMANCE OF THE DEFICIENT SERVICES; OR, IF ORACLE CANNOT SUBSTANTIALLY CORRECT A BREACH IN A COMMERCIALY REASONABLE MANNER, YOU MAY END THE RELEVANT SERVICES AND RECOVER THE FEES PAID TO ORACLE FOR THE DEFICIENT SERVICES.**

**TO THE EXTENT PERMITTED BY LAW, THESE WARRANTIES ARE EXCLUSIVE AND THERE ARE NO OTHER EXPRESS OR IMPLIED WARRANTIES OR CONDITIONS INCLUDING WARRANTIES OR CONDITIONS OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE.**

#### **F. Trial Programs**

You may order trial programs, or Oracle may include additional programs with your order which you may use for trial, non-production purposes only. You may not use the trial programs to provide or attend third party training on the content and/or functionality of the programs. You have 30 days from the delivery date to evaluate these programs. If you decide to use any of these programs after the 30 day trial period, you must obtain a license for such programs from Oracle or an authorized distributor. If you decide not to obtain a license for any program after the 30 day trial period, you will cease using and will delete any such programs from your computer systems. Programs licensed for trial purposes are provided "as is" and Oracle does not provide technical support or offer any warranties for these programs.

#### **G. Indemnification**

1. Intellectual Property Indemnification. If a third party makes a claim against you that any information, design, specification, instruction, software, data, or material ("Material") furnished by Oracle and used by you infringes its intellectual property rights, which shall include copyright and patent rights Oracle, at its sole cost and expense, will defend you against the claim and indemnify you from the damages, liabilities, costs and expenses awarded by the court to the third party claiming infringement or the settlement agreed to by Oracle, if you do the following:

- notify Oracle promptly in writing, not later than 30 days after you receive notice of the claim (or sooner if required by applicable law);
- give Oracle sole control of the defense and any settlement negotiations provided, however, that without your written consent, Oracle may not (1) admit that you have any liability in conjunction with the defense or as a result of the settlement claim; and (2) settle a claim requiring payment by you; and
- give Oracle the information, authority, and assistance Oracle needs to defend against or settle the claim.

If Oracle believes or it is determined that any of the Material may have violated a third party's intellectual property rights, Oracle may choose to either modify the Material to be non-infringing (while substantially preserving its utility or functionality) or obtain a license to allow for continued use, or if these alternatives are not commercially reasonable, Oracle may end the license for, and require return of, the applicable Material and refund any fees you may have paid for it and any unused, prepaid technical support fees you have paid for the license. Oracle will not indemnify you if you alter the Material or use it outside the scope of use identified in Oracle's user documentation or if you use a version of the Materials which has been superseded, if the infringement claim could have been avoided by using an unaltered current version of the Material which was provided to you. Oracle will not indemnify you to the extent that an infringement claim is based upon any information, design, specification, instruction, software, data, or material not furnished by Oracle. Oracle will not indemnify you to the extent that an infringement claim is based upon the combination of any Material with any products or services not provided by Oracle. Oracle will not indemnify you for infringement caused by your actions against any third party if the Oracle program(s) as delivered to you and used in accordance with the terms of this agreement would not otherwise infringe any third party intellectual property rights. This section provides the parties' exclusive remedy for any infringement claims or damages.

2. Bodily Injury and Tangible Personal Property Indemnification. Oracle shall defend and indemnify you against any and all claims of bodily injury and/or tangible personal property damage resulting from grossly negligent or intentionally wrongful actions or omissions of Oracle or a person employed by Oracle (i.e., as an employee or independent contractor) while performing services under an ordering document or participating in the project related to such services, if such actions or omissions were not proximately caused by the action or omission of you or any third party; provided however, that (a) you notify Oracle within thirty (30) days of your receipt of a claim; (b) Oracle has sole control of the defense and all related settlement negotiations provided, however, that without your written consent, Oracle may not (1) admit that you have any liability in conjunction with the defense or as a result of the settlement claim and (2) settle a claim requiring payment by you; and (c) you provide Oracle with the assistance, information and authority reasonably necessary to perform the above; reasonable out-of-pocket expenses incurred by you in providing such assistance will be reimbursed by Oracle. As used in this section, the term "tangible personal property" shall not include software, documentation, data or data files. Oracle shall have no liability for any claim of bodily injury and/or tangible personal property damage arising from use of software. This section states the parties' entire liability and exclusive remedy for bodily injury and property damage.

## **H. Technical Support**

For purposes of the ordering document, technical support consists of annual technical support services you may have ordered for the programs. If ordered, annual technical support (including first year and all subsequent years) is provided under Oracle's technical support policies in effect at the time the services are provided. The technical support policies, incorporated in this agreement, are subject to change at Oracle's discretion; however, Oracle will not materially reduce the level of services provided for supported programs during the period for which fees for technical support have been paid. You should review the policies prior to entering into the ordering document for the applicable services. You may access the current version of the technical support policies at <http://oracle.com/contracts>.

Technical support is effective upon the effective date of the ordering document unless otherwise stated in your order. If your order was placed through the Oracle Store, the effective date is the date your order was accepted by Oracle.

Software Update License & Support (or any successor technical support offering to Software Update License & Support, "SULS") acquired with your order may be renewed annually and, if you renew SULS for the same number of licenses for the same programs, for the first and second renewal years the fee for SULS, will not increase by more than 4 % over the prior year's fees. If your order is fulfilled by a member of Oracle's partner program, the fee for SULS for the first renewal year will be the price quoted to you by your partner; the fee for SULS for the second renewal year will not increase by more than 4% over the prior year's fees.

If you decide to purchase technical support for any license within a license set, you are required to purchase technical support at the same level for all licenses within that license set. You may desupport a subset of licenses in a license set only if you agree to terminate that subset of licenses. The technical support fees for the remaining licenses will be priced in accordance with the

technical support policies in effect at the time of termination. Oracle's license set definition is available in the current technical support policies. If you decide not to purchase technical support, you may not update any unsupported program licenses with new versions of the program.

#### **I. End of Agreement**

1. Termination for Cause. If either of us breaches a material term of this agreement and fails to correct the breach within 30 days of written specification of the breach, then the breaching party is in default and the non-breaching party may terminate this agreement. If Oracle ends this agreement as specified in the preceding sentence, you must pay within 30 days all amounts which have accrued prior to such end, as well as all sums remaining unpaid for programs ordered and/or services received under this agreement. If Oracle ends the license for a program under the Indemnification section, you must pay within 30 days all amounts that are due and remain unpaid for services already received by you and related to such license. Except for nonpayment of fees, the non-breaching party may agree in its sole discretion to extend the 30 day period for so long as the breaching party continues reasonable efforts to cure the breach. You agree that if you are in default under this agreement, you may not use those programs and/or services ordered. Provisions that survive termination or expiration are those relating to limitation of liability, infringement indemnity, payment, and others which by their nature are intended to survive.

2. Termination for Convenience. You may terminate performance of work under this agreement in whole or in part whenever, if for any reason, you determine that the termination is in the best interest of the State of Kansas. In the event you elect to terminate this agreement pursuant to this provision, you shall provide Oracle written notice at least ten (10) days prior to the termination date. The termination shall be effective as of the date specified in the notice. Oracle shall continue to perform any part of the work that was specifically not terminated by the notice. If you end this agreement as specified in this paragraph, you agree that (i) you must pay within 30 days all amounts which have accrued prior to the end of this agreement, as well as all sums remaining unpaid for programs ordered and services received under this agreement; (ii) you may not use any programs or services ordered as of the effective date of such termination, and (iii) all program licenses acquired under this agreement shall be terminated as of the effective date of such termination.

#### **J. Fees and Taxes**

Payment Terms are Net 30 days. Payment date and receipt of order date shall be in accordance with K.S.A. 75-6403(b). Fees for services listed in an ordering document are exclusive of taxes and expenses. You agree that you have not relied on the future availability of any programs or updates in entering into the payment obligations in your ordering document; however, (a) if you order SULS for programs, the preceding sentence does not relieve Oracle of its obligation to provide updates under your ordering document, if-and-when available, in accordance with Oracle's then current technical support policies, and (b) the preceding sentence does not change the rights granted to you for any program licensed under your ordering document, per the terms of your ordering document and this agreement.

#### **K. Nondisclosure**

By virtue of this agreement, the parties may have access to information that is confidential to one another ("confidential information"). We each agree to disclose only information that is required for the performance of obligations under this agreement. Confidential information shall be limited to all information clearly identified as confidential.

A party's confidential information shall not include information that: (a) is or becomes a part of the public domain through no act or omission of the other party; (b) was in the other party's lawful possession prior to the disclosure and had not been obtained by the other party either directly or indirectly from the disclosing party; (c) is lawfully disclosed to the other party by a third party without restriction on the disclosure; or (d) is independently developed by the other party.

We each agree to hold each other's confidential information in confidence for a period of three years from the date of disclosure. Oracle acknowledges that you are a public institution that is subject to the Open Records Act of the State of Kansas (K.S.A. 45-215 et seq.) (the "Act") and that information concerning this agreement and any ordering document hereunder may be subject to public disclosure pursuant to the Act. You agree to provide Oracle reasonable notice prior to disclosing any Oracle Confidential Information in response to a valid request made pursuant to the Act to allow Oracle to seek injunctive relief or other such relief as may be appropriate. Also, we each agree to disclose confidential information only to those employees or agents who are required to protect it against unauthorized disclosure. Nothing shall prevent either party from disclosing the terms or pricing under this agreement or orders submitted under this agreement in any legal proceeding arising from or in connection with this agreement or disclosing the confidential information to a federal or state governmental entity as required by law.

The parties agree to comply with the Act and all other applicable state and federal laws relating to data privacy or confidentiality and that all of the rights, duties and obligations set forth in this section are subject to the Act.

**L. Entire Agreement**

You agree that this agreement and the information which is incorporated into this agreement by written reference (including reference to information contained in a URL or referenced policy), together with the applicable ordering document, are the complete agreement for the programs and/or services ordered by you, and that this agreement supersedes all prior or contemporaneous agreements or representations, written or oral, regarding such programs and/or services. The captions or headings in this agreement are for reference only and do not define, describe, extend, or limit the scope or intent of this agreement. If any term of this agreement is found to be invalid or unenforceable, the remaining provisions will remain effective and such term shall be replaced with a term consistent with the purpose and intent of this agreement. It is expressly agreed that the terms of this agreement and any Oracle ordering document shall supersede the terms in any purchase order or other non-Oracle ordering document and no terms included in any such purchase order or other non-Oracle ordering document shall apply to the programs and/or services ordered. This agreement and ordering documents may not be modified and the rights and restrictions may not be altered or waived except in a writing signed or accepted online through the Oracle Store by authorized representatives of you and of Oracle. Any notice required under this agreement shall be provided to the other party in writing.

**M. Limitation of Liability**

**NEITHER PARTY SHALL BE LIABLE FOR ANY INDIRECT, INCIDENTAL, SPECIAL, PUNITIVE, OR CONSEQUENTIAL DAMAGES, OR ANY LOSS OF PROFITS, REVENUE, DATA, OR DATA USE. EXCEPT FOR ORACLE'S OBLIGATIONS UNDER SECTION G (INDEMNIFICATION), ORACLE'S MAXIMUM LIABILITY FOR ANY DAMAGES ARISING OUT OF OR RELATED TO THIS AGREEMENT OR YOUR ORDER, WHETHER IN CONTRACT OR TORT, OR OTHERWISE, SHALL BE LIMITED TO THE AMOUNT OF THE FEES YOU PAID ORACLE UNDER THIS AGREEMENT, AND IF SUCH DAMAGES RESULT FROM YOUR USE OF PROGRAMS OR SERVICES, SUCH LIABILITY SHALL BE LIMITED TO THE FEES YOU PAID ORACLE FOR THE DEFICIENT PROGRAM OR SERVICES GIVING RISE TO THE LIABILITY.**

**N. Export**

Export laws and regulations of the United States and any other relevant local export laws and regulations apply to the programs. You agree that such export control laws govern your use of the programs (including technical data) and any services deliverables provided under this agreement, and you agree to comply with all such export laws and regulations (including "deemed export" and "deemed re-export" regulations). You agree that no data, information, program and/or materials resulting from services (or direct product thereof) will be exported, directly or indirectly, in violation of these laws, or will be used for any purpose prohibited by these laws including, without limitation, nuclear, chemical, or biological weapons proliferation, or development of missile technology.

**O. Other**

1. This agreement is governed by the substantive and procedural laws of Kansas. The parties shall bring any and all legal proceedings arising hereunder in the State or Federal Courts located in Shawnee County, Kansas, unless otherwise specified and agreed upon by you. Oracle waives all defenses of lack of personal jurisdiction, personal service and forum non conveniens..

2. If you have a dispute with Oracle or if you wish to provide a notice under the Indemnification section of this agreement, or if you become subject to insolvency or other similar legal proceedings, you will promptly send written notice to: Oracle USA, Inc., 500 Oracle Parkway, Redwood City, California, USA, Attention: General Counsel, Legal Department. All notices, demands, requests, other communications (collectively "notices") which may be required or desired to be given by Oracle to you shall be IN WRITING and addressed as follows:

Director of Accounts and Reports  
 Kansas Department of Administration  
 900 SW Jackson St, Room 351-S  
 Topeka, Kansas 66612-1286  
 Phone: 785-296-2311  
 Fax: 785-296-6841

Chief Counsel  
 Kansas Department of Administration  
 900 SW Jackson, Room 107  
 Topeka, Kansas 66612  
 Phone: 785-296-6000



Fax: 785-296-0043

or to any other persons or addresses as may be designated in writing from you to Oracle.

3. Neither party may assign this agreement without the other party's prior written consent. In addition, you may not assign this agreement or give or transfer the programs and/or any services or an interest in them to another individual or entity without Oracle's prior written consent. If you grant a security interest in the programs and/or any services deliverables, the secured party has no right to use or transfer the programs and/or any services deliverables, and if you decide to finance your acquisition of the programs and/or any services, you will follow Oracle's policies regarding financing which are at <http://oracle.com/contracts>.

4. Except for actions for nonpayment or breach of Oracle's proprietary rights, no action, regardless of form, arising out of or relating to this agreement may be brought by either party more than two years after the cause of action has accrued.

5. Upon 45 days written notice, Oracle may audit your use of the programs. You agree to cooperate with Oracle's audit and provide reasonable assistance and access to information. Any such audit shall not unreasonably interfere with your normal business operations. You agree to pay within 30 days of written notification any fees applicable to your use of the programs in excess of your license rights. If you do not pay, Oracle can end your technical support, licenses and/or this agreement. You agree that Oracle shall not be responsible for any of your costs incurred in cooperating with the audit. If you in good faith provide Oracle with written notice of an alleged error in the amount of underpaid fees due Oracle as a result of an audit of your use of the programs in accordance with the terms of this agreement, each of the parties will appoint its representative to meet for the purpose of endeavoring to resolve such dispute or negotiate for an adjustment to such provision. If such representatives do not resolve the dispute within twenty (20) business days of a party's invoking of this provision, then each party shall immediately refer the dispute to the Executive level. Neither party shall terminate this agreement, or any technical support services hereunder, nor commence formal proceedings for the judicial resolution of such dispute, except for the seeking of equitable relief, until resolution of the dispute has been elevated to the Executive level, and either of the representatives in good faith concludes, after a good faith attempt to resolve the dispute, that amicable resolution through continued negotiation of the matter at issue does not appear likely. Each party shall continue to perform its obligations under this agreement during the resolution of any dispute in accordance with this paragraph.

6. The Uniform Computer Information Transactions Act does not apply to this agreement or orders placed under it. You understand that Oracle's business partners, including any third party firms retained by you to provide computer consulting services, are independent of Oracle and are not Oracle's agents. Oracle is not liable for nor bound by any acts of any such business partner, unless the business partner is providing services as an Oracle subcontractor on an engagement ordered under this agreement.

**P. Force Majeure**

Neither of us shall be responsible for failure or delay of performance if caused by: an act of war, hostility, or sabotage; act of God; electrical, internet, or telecommunication outage that is not caused by the obligated party; government restrictions (including the denial or cancellation of any export or other license); other event outside the reasonable control of the obligated party. We both will use reasonable efforts to mitigate the effect of a force majeure event. If such event continues for more than 90 days, either of us may cancel unperformed services upon written notice. This section does not excuse either party's obligation to take reasonable steps to follow its normal disaster recovery procedures or your obligation to pay for programs delivered or services provided.

**Q. Additional Terms and Conditions (DA-146a)**

1. Terms Herein Controlling Provisions. Despite anything in this agreement or the ordering document to the contrary, it is expressly agreed that the terms of each and every provision in this Section Q shall prevail and control over the terms of any other conflicting provision within this agreement or in any other document relating to and a part of this agreement.

2. Termination Due To Lack Of Funding Appropriation. If, in the judgment of the Director of Accounts and Reports, Department of Administration, sufficient funds are not appropriated to continue the function performed in this agreement and for the payment of the charges hereunder, you may terminate this agreement at the end of your current fiscal year. You agree to give written notice of termination to Oracle at least 30 days prior to the end of your current fiscal year, and shall give such notice for a greater period prior to the end of such fiscal year as may be provided in this agreement, except that such notice shall not be required prior to 90 days before the end of such fiscal year. Oracle shall have the right, at the end of such fiscal year, to take possession of any equipment provided to you by Oracle under this agreement. You will pay to Oracle all regular contractual payments incurred through the end of such fiscal year, plus contractual charges incidental to the return of any such equipment. Upon termination of the agreement by you, title to any such equipment shall revert to Oracle at the end of your current fiscal

year. The termination of this agreement pursuant to this Section Q(2) shall not cause any penalty to be charged to the agency or Oracle. You agree not to knowingly issue orders under this agreement without appropriated and available funds for such order.

3. Disclaimer Of Liability. Neither you nor any agency thereof shall hold harmless or indemnify any contractor beyond that liability incurred under the Kansas Tort Claims Act (K.S.A. 75-6101 et seq.).

4. Anti-Discrimination Clause. Oracle agrees: (a) to comply with the Kansas Act Against Discrimination (K.S.A. 44-1001 et seq.) and the Kansas Age Discrimination in Employment Act (K.S.A. 44-1111 et seq.) and the applicable provisions of the Americans With Disabilities Act (42 U.S.C. 12101 et seq.) (ADA) and to not discriminate against any person because of race, religion, color, sex, disability, national origin or ancestry, or age in the admission or access to, or treatment or employment in, its programs or activities; (b) to include in all solicitations or advertisements for employees, the phrase "equal opportunity employer"; (c) to comply with the reporting requirements set out at K.S.A. 44-1031 and K.S.A. 44-1116; (d) to include those provisions in every subcontract or purchase order so that they are binding upon such subcontractor or vendor; (e) that a failure to comply with the reporting requirements of (c) above or if Oracle is found guilty of any violation of such acts by the Kansas Human Rights Commission, such violation shall constitute a breach of contract and the contract may be cancelled, terminated or suspended, in whole or in part, by the contracting state agency or the Kansas Department of Administration; (f) if it is determined that the contractor has violated applicable provisions of ADA, such violation shall constitute a breach of this agreement and the agreement may be cancelled, terminated or suspended, in whole or in part, by the contracting state agency or the Kansas Department of Administration.

We each understand that the provisions of this Section Q(4) (with the exception of those provisions relating to the ADA) are not applicable to a contractor who employs fewer than four employees during the term of such contract or whose contracts with the contracting state agency cumulatively total \$5,000 or less during the fiscal year of such agency.

5. Acceptance Of Contract. This agreement shall not be considered accepted, approved or otherwise effective until the statutorily required approvals and certifications have been given.

6. Arbitration, Damages, Warranties. Despite any language to the contrary, no interpretation shall be allowed to find you or any agency thereof having agreed to binding arbitration, or the payment of damages or penalties upon the occurrence of a contingency. Further, you shall not agree to pay attorney fees and late payment charges beyond those available under the Kansas Prompt Payment Act (K.S.A. 75-6403).

7. Representative's Authority To Contract. By signing this agreement, the representative of Oracle thereby represents that such person is duly authorized by Oracle to execute this agreement on behalf of Oracle and that Oracle agrees to be bound by the provisions thereof.

8. Responsibility For Taxes. You shall not be responsible for, nor indemnify Oracle for, any federal, state or local taxes which may be imposed or levied upon the subject matter of this agreement.

9. Insurance. You shall not be required to purchase, any insurance against loss or damage to any personal property to which this agreement relates, nor shall this agreement require you to establish a "self-insurance" fund to protect against any such loss or damage. Subject to the provisions of the Kansas Tort Claims Act (K.S.A. 75-6101 et seq.), Oracle shall bear the risk of any loss or damage to any personal property in which Oracle holds title.

10. Information. No provision of this agreement shall be construed as limiting the Legislative Division of Post Audit from having access to information pursuant to K.S.A. 46-1101 et seq.

11. The Eleventh Amendment. The Eleventh Amendment is an inherent and incumbent protection with you and need not be reserved, but prudence requires you to reiterate that nothing related to this agreement shall be deemed a waiver of the Eleventh Amendment.

## **R. Copies of Documentation and Software**

1. Additional Copies of Documentation and Software. Despite anything to the contrary in Section D (Ownership and Restrictions), provided you are current on your license and technical support obligations, you may make an unlimited number of copies of the programs licensed on an Enterprise basis under this agreement and related documentation for: (i) production use according to the terms of this agreement; (ii) archive for emergency back-up purposes; and (iii) disaster recovery testing purposes; and may modify or merge such programs with other software. You may maintain and store all copies of such program

documentation and such programs at any location without notice to Oracle. You may also make an unlimited number of copies of such program documentation solely for your use in accordance with Section C (Rights Granted).

2. Documentation for versions and updates. Despite anything to the contrary in Section D (Ownership and Restrictions), provided you are current on your license and technical support obligations, you may make an unlimited number of copies of the new versions and updates of such programs and related documentation for: (i) production use according to the terms of this agreement; (ii) archive for emergency back-up purposes; and (iii) disaster recovery testing purposes; and may modify or merge such programs with other software. You may maintain and store all copies of documentation and such programs at any location without notice to Oracle. You may also make an unlimited number of copies of documentation solely for your use in accordance with Section C (Rights Granted).

3. Transfer and Assignment of Documentation. Despite anything to the contrary in Section D (Ownership and Restrictions), provided you are current on your license and technical support obligations, and solely with respect to programs licensed on an Enterprise basis under this agreement, you may transfer and assign documentation, training manuals, etc. to any new agency, department, or other State entity without notice or permission from Oracle.

#### **S. Source Code Escrow**

Oracle shall retain in escrow a copy of the source code necessary to support the supported programs (not including any programs for which source code is delivered to you with such programs). The escrowed material shall be maintained under an agreement, which provides that if Oracle ceases to be in the business of supporting the programs, the escrow agent shall furnish you with a copy of the escrowed material that has become unsupported. You shall pay the escrow agent a nominal fee sufficient to cover the cost of reproduction and distribution of source materials, including reasonable administrative expenses thereto. Any escrowed material furnished under this provision shall be considered licensed subject to the terms of this agreement and shall be used solely to maintain the programs.

#### **T. Insurance**

Oracle shall maintain insurance in the amounts set forth herein from an insurance company(s) that is A.M. Best A+ financially rated and duly licensed, admitted, and authorized to do business in the State of Kansas. You will be named as an additional insured on all coverages, as appropriate. Required coverages are to remain in effect through the term of this agreement and proof shall be provided to you within 48 hours of a request. Failure to maintain required insurance coverage during the term of this agreement shall be considered a material breach and grounds for termination of this agreement. The cost of all required insurance shall be included in any ordering document hereunder. You may purchase the required coverage for Oracle should Oracle fail to maintain the required coverage and setoff that cost and expense against amount you may or do owe Oracle for services under this agreement.

##### **1. Insurance provisions shall be at least as follows:**

- (a) Workers' Compensation and Employers' Liability coverage with limits consistent with Kansas statutory benefits, and, if some of the project will be done outside Kansas, the laws of the appropriate state(s) where work on the project will be done. Employers' Liability coverage with policy limits of at least \$500,000 or the statutory limit, whichever is greater.
- (b) Commercial General Liability with a combined single limit of at least \$5,000,000 per occurrence written on an occurrence basis. All limits shall be in addition to defense costs.
- (c) Business Automobile Liability Insurance for all owned, non-owned and hired vehicles with a minimum combined single limit of at least \$1,000,000 per occurrence for bodily injury, personal injury, and/or property damage liability.

2. Subcontractors. Oracle shall include all subcontractors under this agreement as insureds under its policies or shall furnish separate certificates for each subcontractor. All coverages for subcontractors shall be subject to all of the requirements stated herein. Oracle accepts full responsibility for payment of all insurance listed above, including but not limited to unemployment insurance and social security as well as all income tax deductions and any other taxes or payroll deductions required by law for its employees engaged in work authorized by this agreement.

#### **U. Conflicts of Interest**

To the best of Oracle's knowledge, execution and performance of this agreement does not give rise to a conflict of interest. During the performance of this agreement, the parties agree to identify any actual or potential conflicts of interest which may arise, or which may be caused by any additional work hereunder, and to work together to manage, mitigate and avoid any such



conflicts of interest in a manner that is mutually agreeable to the parties and consistent with applicable laws and regulations.

**V. Retention of Records**

Oracle agrees to preserve and make available, upon reasonable advance notice the books and records pertaining directly to the performance of this agreement and the payments made by you under this agreement for a period of five (5) years from the date of the expiration or termination of this agreement.

Matters involving litigation shall be kept for one (1) year following the termination of litigation, including all appeals.

Oracle agrees that, upon reasonable written notice to Oracle, authorized federal and state representatives, including but not limited to personnel of the using agency, independent auditors acting on behalf of you, and/or federal agencies, shall have timely access to and the right to examine such books and records during the contract period and during the five (5)-year post contract period, provided such audit does not unreasonably interfere with Oracle's normal business operations

**W. Antitrust**

If Oracle elects not to defend itself against a claim arising out of the performance of this agreement, Oracle agrees to assign to you all rights to and interests in any cause of action it has or may acquire under the anti-trust laws of the United States and the State of Kansas relating to the particular products or services purchased or acquired by you pursuant to this agreement.

**X. Waiver**

Waiver of any breach of any provision in this agreement shall not be a waiver of any prior or subsequent breach. Any waiver shall be in writing and any forbearance or indulgence in any other form or manner shall not constitute a waiver.

**Y. Independent Contractor**

Both parties, in the performance of this agreement, shall be acting in their individual capacity and not as agents, employees, partners, joint ventures, or associates of one another. The employees or agents of one party shall not be construed to be the employees or agents of the other party for any purpose whatsoever. Oracle shall perform its duties hereunder as an independent contractor and not as an employee. Neither Oracle, nor any agent or employee of Oracle shall be or shall be deemed to be an agent or employee of you. Oracle shall pay when due all required employment taxes and income tax withholding, shall provide and keep in force Workers' Compensation and unemployment compensation insurance in the amounts required by law, shall show proof of such insurance, and shall be solely responsible for the acts of Oracle and its employees and agents.

**Z. Disclosure of Criminal Offenses**

Oracle will not knowingly allow any employee or an individual or entity that controls a company or organization to perform work under this contract if such employee, individual or entity has been convicted of a criminal or civil offense that indicates a lack of business integrity or business honesty. This includes (1) conviction of a criminal offense as an incident to obtaining or attempting to obtain a public or private contract or subcontract or in the performance of such contract or subcontract; (2) conviction under state or federal statutes of embezzlement, theft, forgery, bribery, falsification or destruction of records, or receiving stolen property; and (3) conviction under state or federal antitrust statutes. For the purpose of this section, an individual or entity shall be presumed to have control of a company or organization if the individual or entity directly or indirectly, or acting in concert with one or more individuals or entities, owns or controls twenty-five (25) percent or more of its equity, or otherwise controls its management or policies. Failure to disclose an offense may result in termination of this agreement, as determined by you.

**AA. Immigration and Reform Control Act of 1986 (IRCA)**

In performance of this agreement, Oracle shall comply with the Immigration and Reform Control Act of 1986 (IRCA), as may be amended from time to time. Any violation of this Section AA will constitute a material breach and, at your option, may subject this agreement to termination for cause and any applicable damages.

**BB. Accounts Receivable Set-Off Program**

If during the course of this agreement Oracle is found to owe a debt to you, payments to Oracle due under this agreement may be intercepted / setoff by you, pursuant to K.S.A. 75-6201, et seq.. Notice of the setoff action will be provided to Oracle. Oracle shall credit the account of the agency making the payment in an amount equal to the funds intercepted.

**CC. HIPAA Confidentiality**

Oracle acknowledges that the Health Insurance Portability and Accountability Act of 1996 and its regulations ("HIPAA") govern your use of Protected Health Information ("PHI"), as defined by HIPAA. Oracle, as a software provider, does not perform a

business associate function for you and any potential access to PHI is incidental to the software and related services performed by Oracle. However, Oracle agrees that to the extent that it may have any incidental access to PHI in providing technical support services to you, such PHI will be deemed Confidential Information, as defined by Section K (Nondisclosure) of this agreement; and will not be disclosed to any third party, without your written consent. Following completion of the services, Oracle will destroy any copies of any incidental PHI that may be provided to Oracle during the performance of the tasks requested by you. Oracle will not store, maintain or process any PHI on behalf of you under this agreement.

#### **DD. Recruiting of State Staff**

During the term of this agreement, Oracle shall not, without the prior written consent of your Director of the Division of Accounts and Reports or the Director's designee, knowingly solicit for hire, or retention as an independent contractor, any professional staff who are also in the employ of the State and who are providing services to the State involving this agreement or services similar in nature to the scope of this agreement for a period of six months after the conclusion of this contract. For purposes of this section, "solicit" shall not be deemed to include public advertising (e.g. in newspapers or trade publications). For purposes of this section the term of the agreement shall be as set forth in Section B (Applicability of Agreement) and shall not include periods of annual technical support renewals executed after the expiration of this agreement.

#### **EE. Subcontractors**

Oracle shall be the sole source of contact for this agreement. Oracle shall obtain your prior written consent before contracting any work to be performed under this agreement. You may withhold approval of a subcontractor for any reason. Oracle is totally responsible for all actions and work performed by its subcontractors, if any.

#### **FF. Viruses**

Oracle shall take all precautions that are reasonable, customary, and commercially practical to avoid providing you with any program that contains or introduces a virus which contaminates or damages your equipment or its mainframe, network, personal computing, or other operating environments' hardware including the hardware or software of any third party authorized to be connected to your computing environments. Oracle will maintain a master copy of the appropriate versions of the programs, free of viruses. If you believe a virus may be present in a delivered program, then upon your request, Oracle will provide a master copy to you for comparison with and correction of your copy of the program(s). Oracle's sole liability and your exclusive remedy for breach of the warranty set forth in this paragraph is as follows: (a) Oracle will provide you with another copy of the program or software deliverables resulting from the services free of the virus, and (b) if Oracle is unable to provide the program free of the virus within 30 days of receiving notice of the virus, you may end your license for the program that contains the virus and recover the fees paid for such license and any unused, prepaid technical support fees you paid for the program license.

#### **GG. Date Data Compliance**

Oracle warrants that the current production version of the programs licensed to you under this agreement will meet the following definition of date data compliance when configured and used according to the applicable documented instructions. The definition of date data compliance is the ability to:

1. correctly handle date information before, during and after 1 January 2000 accepting date input, providing date output and performing calculation on dates or portions of dates;
2. function according to the applicable program documentation, during and after 1 January 2000 without changes in operation resulting from the advent of the new century assuming correct configuration;
3. where appropriate, respond to two digit date input in a way that resolves the ambiguity as to century in a disclosed, defined and predetermined manner;
4. store and provide output of date information in ways that are unambiguous as to century; and
5. manage the leap year occurring in the year 2000, following the quad-centennial rule.

Any breach of this warranty is subject to the exclusive remedies as set forth in the third paragraph of Section E (Warranties, Disclaimers and Exclusive Remedies).

#### **HH. Miscellaneous**

1. Corporate Existence and Authority. Oracle is a corporation existing and in good standing under the laws of the State of Kansas, is qualified to do business in the State of Kansas, is properly registered with the Kansas Secretary of State, and has all

necessary power and authority to enter into this agreement and perform all of its obligations pursuant to this agreement

2. Right to Enter. Oracle warrants that, as of the effective date of the ordering document, it has the right to enter into the agreement and the ordering document; Section G (Indemnification) of this agreement states your exclusive remedy and Oracle's entire liability for any breach of this particular warranty.
3. Duly Authorized. The execution and delivery of this agreement has been duly authorized by all necessary corporate action of Oracle and constitutes the valid, legal, and binding obligation of Oracle, enforceable with its terms.
4. The execution and delivery of this contract has been duly authorized by all necessary action of you and constitutes the valid, legal, and binding obligation of you, enforceable with its terms.
5. Press Releases, Public Statements, and/or Communications. Oracle agrees that no public statement, release, or communication acknowledging or implying that you are a customer of Oracle is allowed under this agreement. Any approval by you for such public statement, release, or communication shall only be provided in writing by you to Oracle at the address listed in Section O (Other) above. You may refuse such a request for any reason.
6. Nondiscrimination and Workplace Safety: Oracle agrees to abide by all federal, state, and local laws, rules and regulations prohibiting discrimination in employment and controlling workplace safety. Any violations of such applicable laws or rules and regulations may result in termination of this agreement.
7. Environmental Protection: Oracle shall abide by all federal, state and local laws, rules and regulations regarding the protection of the environment that are applicable to Oracle's performance of this agreement. Oracle shall report any violations to the applicable government agency. A violation of such applicable laws, rules, or regulations may result in termination of this agreement. If you end this agreement as specified in the preceding paragraph, you agree that you must pay within 30 days all amounts which have accrued prior to the end of this agreement, as well as all sums remaining unpaid for programs ordered and services received under this agreement plus and expenses, if any.
8. Care of State Property: Oracle shall be responsible for the proper care and custody of any state owned personal tangible property and real property furnished for Oracle's use in connection with the performance of this agreement, and Oracle will reimburse you for such property's loss or damage caused by Oracle, normal wear and tear excepted.
9. Prohibition Against Gratuities. Oracle shall abide by all federal, state and local laws, rules and regulations that are applicable to Oracle's performance of this agreement, including, but not limited to laws, rules and regulations pertaining to the provision of gifts to your employees.
10. Debarment of State Contractors. Oracle acknowledges that if it fails, without good cause, to perform in accordance with the terms of this agreement, it may be barred for a period of up to three (3) years, pursuant to K.S.A. 75-37,103, or have its work evaluated for pre-qualification purposes.
11. Statutes. Each and every provision of law and clause required by law to be inserted in this agreement shall be deemed to be inserted herein and this agreement shall be read and enforced as though it were included herein. If through mistake or otherwise any such provision is not inserted, or is not correctly inserted, then on the application of either party this agreement shall be amended to make such insertion or correction.
12. Data. Subject to the terms of this agreement, any and all data reasonably required to be provided at any time during the term of this agreement shall be made available in a format as reasonably requested and/or approved by you.
13. Information to State Legislature. Oracle shall use commercially reasonable efforts to provide information pertaining directly to this agreement, as reasonably requested by the Kansas Legislature, or its committees, within 5 business days of a written request to Oracle, unless a later date is mutually agreed upon by the parties.
14. Independent Project Assistance. You may elect to retain one or more third parties to provide independent technology, procedure, project management, quality assurance monitoring, and/or other management assistance in the performance of this agreement. The objective of this external assistance is to provide an independent assessment of project progress and problems, provide management assistance as determined by you, and proactively recommend strategies and actions to avoid or mitigate project risks. You will ensure that any such third party will be bound by the non-disclosure obligations set forth in this

agreement. Oracle shall work cooperatively with any such third party; and maintain a candid and open communication forum with the third party as well as you.

15. Inspection. You shall have the right at any time to inspect any facility or project site where services are carried out.

## **II. Successor Products**

If Oracle makes successor products available for Siebel, J.D. Edwards, PeopleSoft, and Oracle product lines ("New Software") that includes substantially similar functionality and features as a program for which you have purchased under this agreement ("Old Software"), Oracle will provide you with a migration path from the Old Software to the New Software and the right to use the New Software under this Agreement at no charge, provided that (i) you are current on technical support for the Old Software; (ii) this right shall only apply to New Software that is available in production release status on the operating system identified by the you at the time of the request; and (iii) Oracle is currently making available, at no charge, such migration path from the Old Software to the New Software to its other supported customers. If Oracle does not provide to all of its supported customers a migration path from the Old Software to the New Software at no additional charge, then Oracle will provide you with the right to use under this agreement at no additional charge only the functionality and features contained in the New Software that is substantially similar to the functionality and features contained in the Old Software, provided you shall not have the right to use nor shall it use any additional functionality or features in such New Software.

## **JJ. License Definitions and Rules**

The following license definitions and rules pertain, as applicable, to the specific programs ordered as set forth on an ordering document placed under this agreement. If a particular definition or rule is not applicable to the specific program(s) ordered, such definition and/or rule shall not apply with respect to that ordering document.

To fully understand your license grant, you need to review the definition for the licensing metric and term designation as well as the licensing rules which are incorporated in and made a part of this agreement.

### **Definitions and License Metrics**

**Adapter:** is defined as each software code interface, installed on each Oracle Internet Application Server Enterprise Edition, which facilitates communication of information between each version of a third party software application or system and Oracle programs.

**\$M Annual Transaction Volume:** is defined as one million U.S. dollars (\$1,000,000) in all purchase orders transacted and all auctions conducted through the Oracle Exchange Marketplace by you and others during the applicable year of the Oracle Exchange Marketplace license, regardless of whether any such auction results in a purchase order, provided that an auction resulting in a purchase order shall only be counted against the Annual Transaction Volume once.

**Applications National Language Support (NLS) Supplement Media Packs:** Please be advised that only a subset of the products included on an Applications NLS Supplement Media Pack have been translated. For existing supported customers, MetaLink has information on which products have been translated for the supported languages (<http://metalink.oracle.com>). For new or unsupported customers, please contact your Oracle Account Manager for this information.

**Application User:** is defined as an individual authorized by you to use the applicable licensed application programs which are installed on a single server or on multiple servers regardless of whether the individual is actively using the programs at any given time. If you license the Oracle Self Service Work Request option in conjunction with Oracle Enterprise Asset Management, you are required to maintain licenses for the equivalent number of Application Users licensed and you are granted unlimited access to initiate work requests, view work request status and view scheduled completion dates for your entire employee population. Application Users licensed for Oracle Order Management are allowed to manually enter orders directly into the programs but any orders entered electronically from other sources must be licensed separately. For Oracle Sourcing, Oracle iSupplier Portal, Oracle Services Procurement, PeopleSoft eSupplier Connection and PeopleSoft Strategic Sourcing programs, use by your external suppliers is included with your application user licenses.

**Application Read-Only User:** is defined as an individual authorized by you to run only queries or reports against the application program for which you have also acquired non read-only licenses.

**Case Report Form (CRF) Page:** is defined as the "electronic equivalent" of what would be the total number of physical paper pages initiated remotely by the program (measured explicitly in the program as Received Data Collection Instruments) during a

12 month period. You may not exceed the licensed number of CRF Pages during any 12 month period unless you acquire additional CRF Page licenses from Oracle.

**Collaboration Program User:** is defined as an individual authorized by you to use the programs which are installed on a single server or on multiple servers regardless of whether the individual is actively using the programs at any given time. For the purposes of counting and licensing the number of Real Time Collaboration users, a Collaboration Program User within your company is defined as a user able to initiate, or host, a web conference and also participate in a web conference; all participants in the web conference external to your company and attending a web conference are not required to be licensed.

**Compensated Individual:** is defined as an individual whose compensation or compensation calculations are generated by the programs. The term Compensated Individual includes, but is not limited to, your employees, contractors, retirees, and any other Person.

**Computer:** is defined as the computer on which the programs are installed. A Computer license allows you to use the licensed program on a single specified computer.

**Connector:** is defined as each connector connecting the software product with an external product. A unique connector is required for each distinct product that the software product is required to interface.

**\$M Cost of Goods Sold:** is defined as one million U.S. dollars (\$1,000,000) in the total cost of inventory that a company has sold during their fiscal year. If Cost of Goods Sold is unknown to you then Cost of Goods Sold shall be equal to 75% of total company revenue.

**Custom Suite User:** is defined as an individual authorized by you to use the application programs included in the applicable Custom Applications Suite which are installed on a single server or on multiple servers regardless of whether the individual is actively using the programs at any given time.

**Customer:** is defined as the customer entity specified on the ordering document. The programs may not be used or accessed for the business operations of any third party, including but not limited to your customers, partners, or your affiliates. There is no limitation on the number of computers on which such programs may be copied, installed and used.

**Developer User:** is defined as an individual authorized by you to use the programs which are installed on a single server or multiple servers, regardless of whether the individual is actively using the programs at any given time. Developer Users may create, modify, view and interact with the programs and documentation.

**Electronic Order Line:** is defined as the total number of distinct order lines entered electronically into the Oracle Order Management application from any source (not manually entered by licensed Order Management Users, Professional Users 2003, or Professional Users 2003 - External) during a 12 month period. This includes order lines originating as external EDI/XML transactions and/or sourced from other Oracle and non-Oracle applications. You may not exceed the licensed number of order lines during any 12 month period.

**Employee:** is defined as all of your full-time, part-time, temporary employees and all of your agents, contractors and consultants. The quantity of the licenses required is determined by the number of Employees and not the actual number of users. In addition, if you elect to outsource any business function(s) to another company, all of the company's full-time, part-time, temporary employees and agents, contractors and consultants that are providing the outsourcing services for you must be counted for the purposes of determining the number of Employees.

**Employee User:** is defined as an individual authorized by you to use the programs which are installed on a single server or multiple servers, regardless of whether or not the individual is actively using the programs at any given time

**Expense Report:** is defined as the total number of expense reports processed by Internet Expenses during a 12 month period. You may not exceed the licensed number of expense reports during any 12 month period.

**Field Technician:** is defined as an engineer, technician, representative, or other person who is dispatched by you, including the dispatchers, to the field using the programs.



**\$M Freight Under Management:** is defined as one million US Dollars (\$1,000,000) of the total transportation value of tendered orders for all shipments for a given calendar year during the term of the license. FUM shall include the combined total of actual freight purchased by you, plus the cost of freight for shipments managed by you (e.g., you are not purchasing transportation services on behalf of your clients but are providing transportation management services for your clients). Freight that is paid by a third party shall also be included in the FUM total (e.g., inbound shipments from suppliers to you with freight terms of prepaid).

**Full Time Equivalent (FTE) Student:** is defined as any full-time student enrolled in your institution and any part-time student enrolled in your institution counts as 25% of an FTE Student. The definition of "full-time" and "part-time" is based on your policies for student classification. If the number of FTE Students is a fraction, that number will be rounded to the nearest whole number for purposes of license quantity requirements.

**Hosted Named User:** is defined as an individual authorized by you to access the hosted service, regardless of whether the individual is actively accessing the hosted service at any given time.

**1K Invoice Line:** is defined as one thousand invoice line items processed by the program during a 12 month period. You may not exceed the licensed number of Invoice Lines during any 12 month period unless you acquire additional Invoice Line licenses from Oracle.

**IVR Port:** is defined as a single caller that can be processed via the Interactive Voice Response (IVR) system. You must purchase licenses for the number of IVR Ports that represent the maximum number of concurrent callers that can be processed by the IVR system.

**\$M in Managed Assets:** is defined as one million U.S. dollars (\$1,000,000) of the following total: (1) Book value of investment in capital leases, direct financing leases and other finance leases, including residuals, whether owned or managed for others, active on the program, plus (2) Book value of assets on operating leases, whether owned or managed for others, active on the program, plus (3) Book value of loans, notes, conditional sales contracts and other receivables, owned or managed for others, active on the program, plus (4) Book value of non earning assets, owned or managed for others, which were previously leased and active on the program, including assets from term terminated leases and repossessed assets, plus (5) Original cost of assets underlying leases and loans, originated and active on the program, then sold within the previous 12 months.

**Membership:** is defined as an individual authorized by you to access the hosted service, regardless of whether the individual is accessing the hosted service at any given time.

**Module:** is defined as each production database running the programs.

**Monitored User:** is defined as an individual who is monitored by an Analytics program which is installed on a single server or multiple servers, regardless of whether the individual is actively being monitored at any given time. Individual users who are licensed for an Analytics program by either Named User Plus or Application User may not be licensed by Monitored User. For the purposes of the Usage Accelerator Analytics program, every user of your licensed CRM Sales application program must be licensed. For the purposes of the Human Resources Compensation Analytics program, all of your employees must be licensed.

**Named User Plus:** is defined as an individual authorized by you to use the programs which are installed on a single server or multiple servers, regardless of whether the individual is actively using the programs at any given time. A non human operated device will be counted as a named user plus in addition to all individuals authorized to use the programs, if such devices can access the programs. If multiplexing hardware or software (e.g., a TP monitor or a web server product) is used, this number must be measured at the multiplexing front end. Automated batching of data from computer to computer is permitted. You are responsible for ensuring that the named user plus per processor minimums are maintained for the programs contained in the user minimum table in the licensing rules section; the minimums table provides for the minimum number of named users plus required and all actual users must be licensed.

For the purposes of the following programs: Configuration Management Pack for Non-Oracle Systems, System Monitoring Plug-in for Hosts, System Monitoring Plug-in for Non Oracle Databases, System Monitoring Plug-in for Non Oracle Middleware, Diagnostics Pack for Non-Oracle Middleware and Provisioning Pack, only the users of the third party program that is being managed/monitored are counted for the purpose of determining the number of licenses required.

For the purposes of the following programs: Application Management Pack for Oracle E-Business Suite, Application

Management Pack for Siebel, and Application Management Pack for PeopleSoft Enterprise, all users of the middleware and/or database software that support the respective application program are counted for the purpose of determining the number of licenses required.

**Network Device:** is defined as the hardware and/or software whose primary purpose is to route and control communications between computers or computer networks. Examples of network devices include but are not limited to, routers, firewalls and network load balancers.

**Non Employee User - External:** is defined as an individual, who is not your employee, contractor or outsourcer, authorized by you to use the programs which are installed on a single server or multiple servers, regardless of whether or not the individual is actively using the programs at any given time.

**Oracle Finance Division Contract:** is a contract between you and Oracle (or one of Oracle's affiliates) that provides for payments over time of some or all of the sums due under your order. You may not use an Oracle Finance Division Contract to pay for any orders paced under this agreement.

**Oracle University Knowledge Center Service:** is defined as a web based learning environment hosted by Oracle that provides on demand access to either an individual Oracle University training course ("Online Course") or to all (or limited content subsets) of the Oracle University training courses available on the Knowledge Center website ("Passport"). The Oracle University Knowledge Center service is available at <http://www.oracle.com/education/oukc/>, and is made available to you subject to the terms of this agreement and Oracle University's Online Hosting Access Policies, which are located at [http://www.oracle.com/education/oukc/hosting\\_policies.html](http://www.oracle.com/education/oukc/hosting_policies.html) and may be updated by Oracle from time to time without notice to you. Online Courses and Passports are made available on a membership basis. In the event that any Oracle programs are made available for download as part of the service, then use of such programs is subject to the terms of this agreement. If you acquire the Oracle University Knowledge Center service, the term shall be one year from the effective date of your order. **NOTWITHSTANDING ANYTHING TO THE CONTRARY IN THE AGREEMENT, ORACLE DOES NOT WARRANT THAT THE ORACLE UNIVERSITY KNOWLEDGE CENTER SERVICE WILL BE PROVIDED UNINTERRUPTED OR ERROR-FREE.**

**Order Line:** is defined as the total number of order entry line items processed by the program during a 12 month period. Multiple order entry line items may be entered as part of an individual customer order or quote and may also be automatically generated by the Oracle Configurator. You may not exceed the licensed number of Order Lines during any 12 month period unless you acquire additional Order Line licenses from Oracle.

**Order Management User:** is defined as an individual authorized by you to use the applicable licensed application programs which are installed on a single server or on multiple servers regardless of whether the individual is actively using the programs at any given time. Order Management Users are allowed to manually enter orders directly into the programs but any orders entered electronically from other sources must be licensed separately.

**Orders:** is defined as the total number of distinct orders for all programs that are a part of Electronic Orders, entered electronically (not manually entered by licensed professional users) through EDI, XML or other electronic means including purchase orders transmitted from Oracle Purchasing, during a 12 month period. You may not exceed the licensed number of orders during any 12 month period.

**Partner Organization:** is defined as an external third party business entity that provides value-added services in developing, marketing and selling your products. Depending upon the type of industry, partner organizations play different roles and are recognized by different names such as reseller, distributor, agent, dealer or broker.

**Person:** is defined as your employee or contractor who is actively working on behalf of your organization or a former employee who has one or more benefit plans managed by the system or continues to be paid through the system. For Project Resource Management, a person is defined as an individual who is scheduled on a project. The total number of licenses needed is to be based on the peak number of part-time and full-time people whose records are recorded in the system.

**Physical Server:** is defined as each physical server on which the programs are installed.

**Ported Number:** is defined as the telephone number that end users retain as they change from one service provider to another. This telephone number originally resides on a telephone switch and is moved into the responsibility of another telephone switch.

**Processor:** shall be defined as all processors where the Oracle programs are installed and/or running. Programs licensed on processor basis may be accessed by your internal users (including agents and contractors) and by your third party users. For the purposes of counting the number of processors which require licensing for a Sun UltraSPARC T1 processor with 4, 6 or 8 cores at 1.0 gigahertz or 8 cores at 1.2 gigahertz for only those servers specified on the Sun Server Table which can be accessed at <http://oracle.com/contracts>, "n" cores shall be determined by multiplying the total number of cores by a core processor licensing factor of .25. For the purposes of counting the number of processors which require licensing for AMD and Intel multicore chips, "n" cores shall be determined by multiplying the total number of cores by a core processor licensing factor of .50. For the purposes of counting the number of processors which require licensing for all hardware platforms not otherwise specified in this section, a multicore chip with "n" cores shall be determined by multiplying "n" cores by a core processor licensing factor of .75. All cores on all multicore chips for each licensed program for each core processor licensing factor listed above are to be aggregated before multiplying by the appropriate core processor licensing factor and all fractions of a number are to be rounded up to the next whole number. When licensing Oracle programs with Standard Edition One or Standard Edition in the product name, a processor is counted equivalent to an occupied socket; however, in the case of multi-chip modules, each chip in the multi-chip module is counted as one occupied socket.

For example, a Sun UltraSPARC T1 based server installed and/or running the program (other than Standard Edition One programs or Standard Edition programs) on 6 cores would require 2 processor licenses (6 multiplied by a core processor licensing factor of .25 equals 1.50 which is then rounded up to the next whole number which is 2). An Intel or AMD based server installed and/or running the program (other than Standard Edition One programs or Standard Edition programs) on 7 cores would require 4 processor licenses (7 multiplied by a core processor licensing factor of .50 equals 3.50 which is then rounded up to the next whole number which is 4). Two multicore servers, for hardware platforms not specified above, installed and/or running the program on 10 cores would require 8 processor licenses (10 multiplied by a core processor licensing factor of .75 equals 7.50 which is then rounded up to the next whole number which is 8).

For the purposes of the following programs: Configuration Management Pack for Non-Oracle Systems, System Monitoring Plug-in for Hosts, System Monitoring Plug-in for Non Oracle Databases, System Monitoring Plug-in for Non Oracle Middleware, Diagnostics Pack for Non-Oracle Middleware and Provisioning Pack, only the processors on which the third party program that is being managed/monitored are running are counted for the purpose of determining the number of licenses required.

For the purposes of the following programs: Application Management Pack for Oracle E-Business Suite, Application Management Pack for Siebel, and Application Management Pack for PeopleSoft Enterprise, all processors on which the middleware and/or database software that support the respective application program are running are counted for the purpose of determining the number of licenses required.

For the Healthcare Transaction Base program, only the processors on which Internet Application Server Enterprise Edition and this program are installed and/or running are counted for the purpose of determining the number of licenses required. For the iSupport, iStore and Configurator programs, only the processors on which Internet Application Server (Standard Edition and/or Enterprise Edition) and the licensed program are running are counted for the purpose of determining the number of licenses required for the licensed program; under these licenses you may also install and/or run the licensed program on the processors where a licensed Oracle Database (Standard Edition and/or Enterprise Edition) is installed and/or running.

For the purposes of the following program: Data Integrator - Target Database, only the processor(s) on which the target database is running are counted for the purpose of determining the number of Target Database licenses required.

For the purposes of the following program: Audit Vault Collection Agent, only the processors of the database sources from which audit data is collected are counted for the purpose of determining the number of licenses required.

**Program Documentation:** is defined as the program user manual and program installation manuals.

**\$M in Revenue:** is defined as one million U.S. dollars (\$1,000,000) in all income (interest income and non interest income) before adjustments for expenses and taxes generated by you during a fiscal year.

**Record:** The Customer Hub B2B is a bundle that includes two components, Siebel Universal Customer Master B2B and Oracle Customer Data Hub. For the purposes of the Customer Hub B2B application, record is defined as the total number of unique customer database records stored in the Customer Hub B2B application (i.e., stored in a component of Customer Hub B2B). A customer database record is a unique business entity or company record, which is stored as an account for the Siebel Universal

Customer Master B2B product or as an organization for the Oracle Customer Data Hub product.

The Customer Hub B2C is a bundle that includes two components, Siebel Universal Customer Master B2C and Oracle Customer Data Hub. For the purposes of the Customer Hub B2C application, record is defined as the total number of unique customer database records stored in the Customer Hub B2C application (i.e., stored in a component of Customer Hub B2C). A customer database record is a unique consumer (i.e., physical person) record, which is stored as a contact for the Siebel Universal Customer Master product or as a person for the Oracle Customer Data Hub product.

The Product Hub is a bundle that includes two components, Siebel Universal Product Master and Oracle Product Information Management Data Hub. For the purposes of the Product Hub application, record is defined as the total number of unique product database records stored in the Product Hub application (i.e., stored in a component of Product Hub). A product database record is a unique product component or SKU stored in the MTL\_SYSTEM\_ITEMS table with an active or inactive status and does not include any instance items (i.e. \*-star items) or organization assignments of the same item.

For the purposes of the Case Hub program a record is defined as the total number of unique case database records that may be stored in the Case Hub application.. A case database record is a unique request or issue requiring investigation or service stored in S\_CASE table with an active or inactive status.

For the programs listed above, please see the application licensing prerequisites as specified in the Applications Licensing Table which may be accessed at <http://oracle.com/contracts> for the grant and restrictions of the underlying Oracle technology.

For the Hyperion Data Relationship Management program, a record is defined as the unique occurrence of any business object or master data construct that you choose to manage within the program. Records may describe any number of enterprise information assets, commonly referred to as base members, including but not limited to cost centers, ledger accounts, legal entities, organizations, products, vendors, assets, locations, regions or employees. Additionally, a record may also be a summary object, commonly referred to as a rollup member, that either summarizes base members or describes hierarchical information associated with underlying base members. Records represent unique occurrences and they do not include any duplicates or shared references that may be essential for master data management purposes.

**1000 Records:** is defined as 1000 cleansed records (i.e., rows) that are output from a production data flow of the Data Quality for Data Integrator program.

**RosettaNet Partner Interface Processes® (PIPs®):** are defined as business processes between trading partners. Preconfigured system-to-system XML-based dialogs for the relevant E-Business Suite Application(s) are provided. Each preconfigured PIP includes a business document with the vocabulary and a business process with the choreography of the message dialog.

**Rule Set:** is defined as a data rules file containing content for a given country in order to perform data quality functions optimized for that country.

**Service Order Line:** is defined as the total number of service order entry line items processed by the program during a 12 month period. Multiple service order entry line items may be entered as part of an individual customer service order or quote. You may not exceed the licensed number of Service Order Lines during any 12 month period unless you acquire additional Service Order Line licenses from Oracle.

**Subscriber:** is defined as (a) a working telephone number for all wireline devices; (b) a portable handset or paging device that has been activated by you for wireless communications and paging; (c) a residential drop or a nonresidential device serviced by a cable provider; or (d) a live connected utility meter. The total number of Subscribers is equal to the aggregate of all types of Subscribers. If your business is not defined in the primary definition of Subscriber above, Subscriber is defined as each U.S. \$1,000 (one thousand dollar) increment of your gross annual revenue as reported to the SEC in your annual report or the equivalent accounting or reporting document.

**Suite:** is defined as all the functional software components described in the product documentation.

**Tape Drive:** is defined as mechanical devices used to sequentially write, read and restore data from magnetic tape media. Typically used, but not limited to, data protection and archival purposes, tape drives are deployed either as a standalone unit(s) or housed within a robotic tape library. Examples of tape drive include but are not limited to, Linear Tape Open (LTO), Digital

Linear Tape (DLT), Advanced Intelligent Type (AIT), Quarter-Inch Cartridge (QIC), Digital Audio Tape (DAT), and 8mm Helical Scan.

### **Technical Reference Manuals**

Technical Reference Manuals ("TRMs") are Oracle's confidential information. You shall use the TRMs solely for your internal data processing operations for purposes of: (a) implementing applications programs, (b) interfacing other software and hardware systems to the applications programs and (c) building extensions to applications programs. Except as such disclosure may be required by Open Records Act of the State of Kansas (K.S.A. 45-205 et seq.) (the "Act"). You shall not disclose, use or permit the disclosure or use by others of the TRMs for any other purpose. To the extent permissible under the Act, you agree to give Oracle reasonable notice prior to any such disclosure to allow Oracle to seek injunctive relief or other such relief as may be appropriate. You shall not use the TRMs to create software that performs the same or similar functions as any of Oracle products. You agree: (a) to exercise either at least the same degree of care to safeguard the confidentiality of the TRMs as you exercise to safeguard the confidentiality of your own most important confidential information or a reasonable degree of care, whichever is greater; (b) to maintain agreements with your employees and agents that protect the confidentiality and proprietary rights of the confidential information of third parties such as Oracle and instruct your employees and agents of these requirements for the TRMs; (c) restrict disclosure of the TRMs to those of your employees and agents who have a "need to know" consistent with the purposes for which such TRMs were disclosed; (d) maintain the TRMs at all times on your premises; and (e) not to remove or destroy any proprietary or confidential legends or markings placed upon the TRMs. Oracle shall retain all title, copyright and other proprietary rights in the TRMs. TRMs are provided to you "as-is" without any warranty of any kind. Upon termination, you shall cease using, and shall return or destroy, all copies of the applicable TRMs.

**Terabyte:** is defined as a terabyte of computer storage space used by a storage filer equal to one trillion bytes.

**Trainee:** is defined as an employee, contractor, student or other person who is being recorded by the program.

**Transaction:** is defined as each set of interactions that is initiated by an application user recorded by Oracle Enterprise Manager to capture availability and performance metrics used in calculating service levels. For example, the following set of interactions would represent one transaction: login, search customer, log out.

**UPK Developer:** is defined as an individual authorized by you to use the programs which are installed on a single server or multiple servers, regardless of whether the individual is actively using the programs at any given time. UPK Developers may create, modify, view and interact with simulations and documentation.

**UPK Employee:** is defined as an active employee of yours. (Note: The value of these applications is determined by the size of the active employee population and not the number of actual users. Therefore, all of your active employees must be included in your order when licensing these applications). UPK Employees may view and interact with simulations and documentation but may not create or modify simulations or documentation.

**UPK User:** is defined as an individual authorized by you to use the programs which are installed on a single server or multiple servers, regardless of whether the individual is actively using the programs at any given time. UPK Users may view and interact with simulations and documentation but may not create or modify simulations or documentation.

**Warehouse Builder Connector:** is defined as a software product that connects an Oracle database where the Oracle Warehouse Builder code is deployed, to an external product (e.g., SAP). A unique connector is required for each distinct external product for which the Oracle database is required to interface.

**Workstation:** is defined as the client computer from which the programs are being accessed, regardless of where the program is installed.

### **Term Designation**

If your program license does not specify a term, the program license is perpetual and shall continue unless terminated as otherwise provided in the agreement.

**1, 2, 3, 4, 5 Year Terms:** A program license specifying a 1, 2, 3, 4 or 5 Year Term shall commence on the effective date of the order and shall continue for the specified period. At the end of the specified period the program license shall terminate.

**1 Year Hosting Term:** A program license specifying a 1 Year Hosting Term shall commence on the effective date of the order



and shall continue for a period of 1 year. At the end of the 1 year the program license shall terminate. A program license specifying a 1 Year Hosting Term may only be used for providing internet hosting services.

**1 Year Oracle Hosted Term:** A program license specifying a 1 Year Oracle Hosted Term shall commence on the effective date of the order and shall continue for a period of 1 year. At the end of the 1 year the program license shall terminate. A program license specifying a 1 Year Oracle Hosted Term must be hosted by Oracle.com via Computer and Administration services.

**1 Year Subscription:** A program license specifying a 1 Year Subscription shall commence on the effective date of the order and shall continue for a period of 1 year. At the end of the 1 year the program license shall terminate.

### **Licensing Rules**

**Failover:** Subject to the conditions that follow below, your license for the following programs, Oracle Database (Enterprise Edition, Standard Edition or Standard Edition One), Oracle Database Enterprise Edition Options, Oracle Internet Application Server (Enterprise Edition, Standard Edition, Standard Edition One or Java Edition), Oracle Internet Application Server Options, Business Intelligence Suite Enterprise Edition Plus, Business Intelligence Server Enterprise Edition and Business Intelligence (Standard Edition or Standard Edition One) includes the right to run the licensed program(s) on an unlicensed spare computer in a failover environment for up to a total of twenty separate days in any given calendar year (for example, if a failover node is down for two hours on Tuesday and three hours on Friday, it counts as two days). When the primary node fails, the failover node acts as the primary node. Once the primary node is repaired or replaced, you must switch back to the primary node. Once the failover period has exceeded ten days, the failover node must be licensed. In addition, only one failover node per clustered environment is at no charge for up to ten separate days even if multiple nodes are configured as failover. Downtime for maintenance purposes counts towards the ten separate days limitation. When licensing options on a failover environment, the options must match the number of licenses of the associated database. Additionally, when licensing by Named User Plus, the user minimums are waived on one failover node only. Any use beyond the right granted in this section must be licensed separately. In a failover environment, the same license metric must be used for the production and failover nodes when licensing a given clustered configuration.

**Testing:** For the purpose of testing physical copies of backups, your license for the Oracle Database (Enterprise Edition, Standard Edition or Standard Edition One) includes the right to run the database on an unlicensed computer for up to four times, not exceeding 10 days per testing, in any given calendar year.

You are responsible for ensuring that the following restrictions are not violated:

- Oracle Database Standard Edition can only be licensed on servers that have a maximum capacity of 4 sockets. Additionally, it may be licensed on a single cluster of servers supporting up to a maximum capacity of 4 sockets.
- Oracle Standard Edition One, Internet Application Server Standard Edition One and Portal Standard Edition One can only be licensed on servers that have a maximum capacity of 2 sockets.
- Business Intelligence Standard Edition One can only be licensed on servers that have the ability to run a maximum of 2 sockets. The data sources for BI Server and BI Publisher are limited to the included Oracle Standard Edition One, one other database, and any number of flat file sources such as CSV, and XLS. You may use Oracle Warehouse Builder Core ETL to pull data from any number of data sources but you must use only the included Oracle Standard Edition One as the target database.
- The number of TRACE licenses (Rdb Server Option) must match the number of licenses of the associated database.
- The number of Diagnostics Pack and /or Configuration Management Pack licenses must match the number of licenses of the associated Internet Application Server program (Enterprise Edition, Standard Edition, Standard Edition One or Java Edition).
- The number of Service Registry licenses must match the number of licenses of the associated Internet Application Server program (Java Edition, Standard Edition One or Standard Edition).
- The number of Database Enterprise Edition Options and Database Enterprise Management Packs licenses must match the number of licenses of the associated Audit Vault Server.
- The number of Bpel Process Manager Option, Business Activity Monitoring, XML Publisher, Service Registry and SOA Suite for Oracle Middleware licenses must match the number of licenses of the associated Internet Application Server Enterprise Edition program.
- The number of Interactive Dashboard, Delivers, Answers, Office Plug-in and Reporting and Publishing licenses must match the number of licenses of the associated Business Intelligence Server Enterprise Edition program.
- The number of Business Intelligence Server Enterprise license options must match the number of licenses of the associated Business Intelligence Server Enterprise Edition program. The number of Business Intelligence applications observer licenses

of the associated Usage Accelerator Analytics program must match the number of licenses of the associated transactional CRM Sales application program.

- The number of Business Intelligence applications observer licenses of the associated Human Resources Compensation Analytics program must match the total number of employees and contractors in your organization.
- Decision Connector for Call Center must be licensed for each call center agent receiving decisions from the Oracle Real-Time Decision Server program.
- Decision Connector for Web must be licensed for each web server Processor receiving decisions from the Oracle Real-Time Decision Server program.
- The number of Intelligent Offer Generation for Call Center Agent licenses must match the number of licenses of the Decision Connector for Call Center program.
- Informatica OEM PowerCenter ETL Server may not be used on a standalone basis or as a standalone ETL tool. The Informatica OEM Power Center ETL Server may be used with any data source provided the target(s) are: (i) the Oracle Business Intelligence applications programs (excluding Hyperion Financial Performance Management Applications), (ii) the underlying platforms on which the Oracle Business Intelligence Suite Enterprise Edition Plus program or associated components run, or (iii) a staging database for any of the foregoing. Informatica OEM Power Center ETL Server may also be used where the Oracle Business Intelligence applications programs (excluding Hyperion Financial Performance Management Applications) are the source and non-Oracle Business Intelligence application programs are the target, provided, that users do not use Informatica OEM PowerCenter ETL Server to transform the data.
- Hyperion Data Integration Management, Hyperion Data Integration Management Team Based Development, and the Hyperion Data Integration Management Adapters for SAP BW, SAP R3, PeopleSoft and Siebel are licensed by Computer. Each Computer license is limited to support the use of up to 8 CPUs and each Computer license must be licensed in increments of 8 CPUs. Each core is recognized as a CPU. For computers that have more than 8 CPUs, additional Computer licenses must be purchased based upon the amount of CPUs that you are using. For example, if you are using Hyperion Data Integration Management on 12 CPUs, you need to purchase 2 Computer licenses; if you are using Hyperion Data Integration Management on 17 CPUs, you need to purchase 3 Computer licenses. These programs may be used solely in connection with moving data into and out of a Hyperion Data Store(s) (data/metadata repository(ies) delivered with the Hyperion programs.) These programs may not be used to extract data from a non-Hyperion Data Store(s) to load a custom data warehouse (a data warehouse not built solely from data from a Hyperion Data Store(s). The Hyperion Data Integration Management Computer license allows for such program to 1) connect to the following relational databases only: Oracle, Sybase, IBM DB2, MS SQL Server and 2) source from and write to an unlimited number of flat file/XML files. Hyperion Data Integration Management Adapters for SAP BW, SAP R3, PeopleSoft and Siebel must be licensed separately to allow Hyperion Data Integration Management to connect to these additional sources.
- When you purchase a license for the Data Warehouse Business Adapter program you must have the appropriate licenses for each operational application used as a source (e.g., Oracle, SAP, PeopleSoft, Siebel). A license to the Data Warehouse Adapter program does not provide a license or the right to use the operational applications, a license to the Data Warehouse Adapter program provides only a connector to them.
- Application licensing prerequisites as specified in the Applications Licensing Table which may be accessed at <http://oracle.com/contracts>.
- For the TimesTen In-Memory Database, Replication - TimesTen to TimesTen and Cache Connect to Oracle programs, the number of gigabytes (GB) specified in the program name is the maximum size of data store (aggregate of in-memory databases or caches on a single computer system or node in a cluster of servers) irrespective of the number of processors licensed. You may not exceed the specified GB data store limitation unless you acquire additional licenses from Oracle.
- The number of processor licenses and the maximum data store size for the TimesTen In-Memory Database options must match the number of processor licenses and the maximum data store size for the associated TimesTen In-Memory Database.
- The number of Hyperion program option licenses must match the number of licenses of the associated Hyperion program.
- The license for the Hyperion Planning – System 9 programs includes a limited use license for both the Hyperion Essbase – System 9 and Hyperion Financial Reporting - System 9 programs. Such limited use license means that the Hyperion Essbase – System 9 and Hyperion Financial Reporting - System 9 programs may only be used to access data from the Hyperion Planning – System 9 program. Specifically, the Hyperion Essbase – System 9 program cannot be used to create Essbase cubes that do not contain data used by the Hyperion Planning – System 9 program and the Aggregate Storage option component of the Hyperion Essbase – System 9 program may not be used.

If you purchase Named User Plus licenses for the programs listed below, you must maintain the following user minimums and user maximums:

<b>Program</b>	<b>Named User Plus Minimum</b>
Oracle Database Enterprise Edition	25 Named Users Plus per Processor
Rdb Enterprise Edition	25 Named Users Plus per Processor
CODASYL DBMS	25 Named Users Plus per Processor
TopLink and Application Development Framework	10 Named Users Plus per Processor
Internet Application Server Java Edition	10 Named Users Plus per Processor*
Internet Application Server Standard Edition	10 Named Users Plus per Processor*
Internet Application Server Enterprise Edition	10 Named Users Plus per Processor*
BPEL Process Manager	10 Named Users Plus per Processor
Portal	10 Named Users Plus per Processor
Integration	10 Named Users Plus per Processor
Forms and Reports	10 Named Users Plus per Processor
Web Services Manager	10 Named Users Plus per Processor
XML Publisher	10 Named Users Plus per Processor
Virtual Directory	10 Named Users Plus per Processor
SOA Suite for Non Oracle Middleware	10 Named Users Plus per Processor
Business Activity Monitoring for Non Oracle Middleware	10 Named Users Plus per Processor
Fusion Middleware for PeopleSoft	10 Named Users Plus per Processor
Fusion Middleware for SAP	10 Named Users Plus per Processor
Business Intelligence Standard Edition	10 Named Users Plus per Processor
Universal Content Management	10 Named Users Plus per Processor
Imaging and Process Management	10 Named Users Plus per Processor
Content Conversion Server	10 Named Users Plus per Processor

\*The Named User Plus Minimum does not apply if the program is installed on a one processor machine that allows for a maximum of one user per program.

<b>Program</b>	<b>Named User Plus Maximum</b>
Personal Edition	1 Named User Plus per database
Business Intelligence Standard Edition One	50 Named Users Plus

The number of licenses for the programs listed below must match the number of licenses of the associated database and if you purchase Named User Plus licenses for these programs, you must maintain, at a minimum, 25 Named Users Plus per Processor per associated database.

**Database Enterprise Edition Options** - Real Application Clusters, Partitioning, OLAP, Data Mining, Spatial, Advanced Security, Label Security, Content Database Suite, Records Database, Database Vault, Warehouse Builder Enterprise ETL, Warehouse Builder Data Quality, Active Data Guard, Real Application Testing, Advanced Compression, Total Recall

**Database Enterprise Management Packs** - Diagnostics Pack, Tuning Pack, Change Management Pack, Configuration Management Pack and Provisioning Pack for DB

The effective date of this agreement shall be \_\_\_\_\_, 200\_\_.

**State of Kansas**

Authorized  
Signature: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Signature Date: \_\_\_\_\_

**Oracle USA, Inc.**

Authorized  
Signature: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Signature Date: \_\_\_\_\_